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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 299

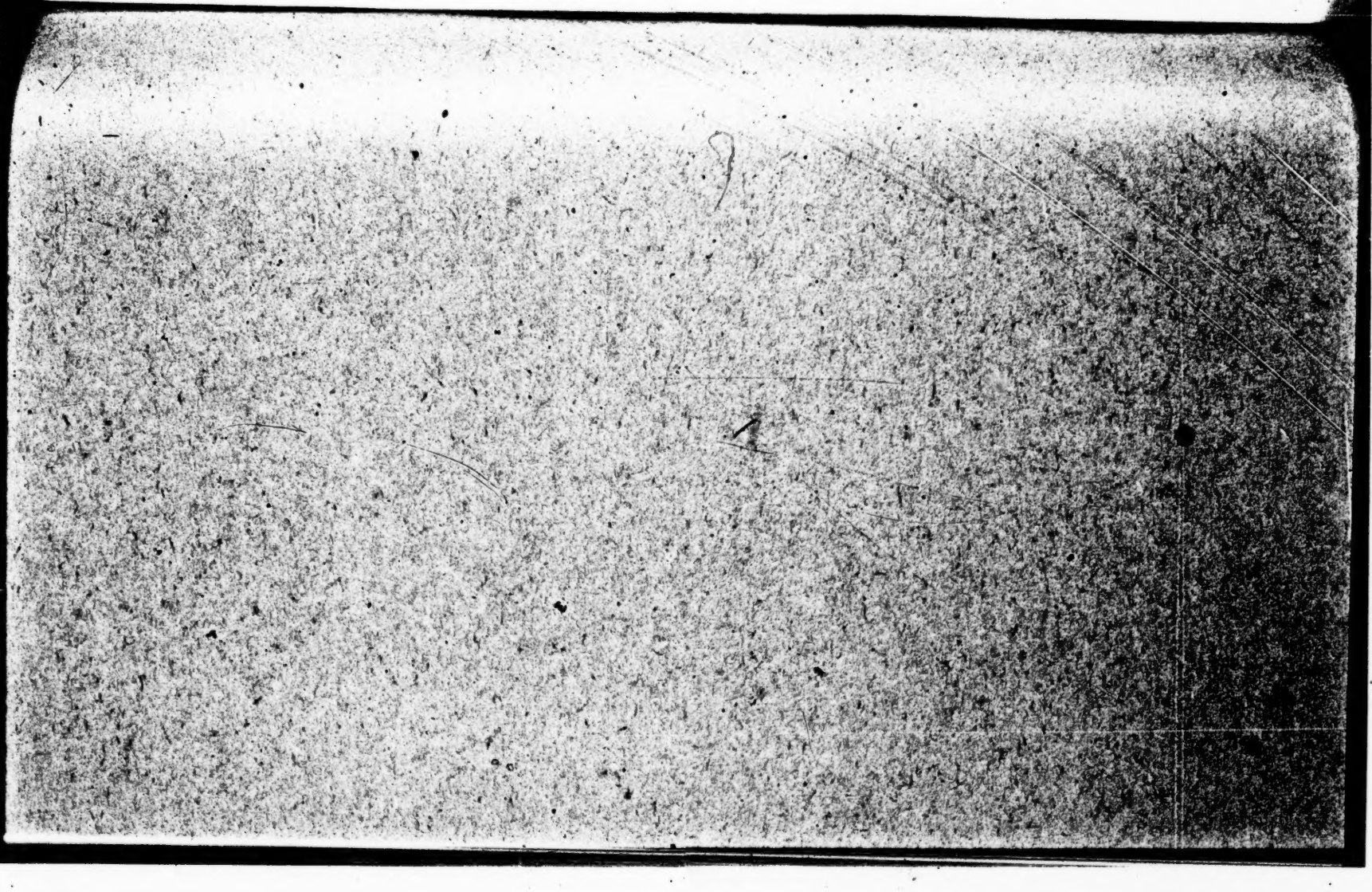
STOCKHOLDERS OF HAGERSTOWN BANK AND TRUST COMPANY, APPELLANTS,

vs.

WARREN F. STERLING, RECEIVER FOR HAGERSTOWN BANK AND TRUST COMPANY, ETC.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 28, 1936.



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STATE OF MARYLAND

VS.

THE HAGERSTOWN BANK AND TRUST COMPANY

A Body Corporate

No. 12,777 Equity

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY

SITTING AS A COURT OF EQUITY

TITLING

STATE OF MARYLAND	No. 12,777 Equity
Vs.	IN THE CIRCUIT COURT
HAGERSTOWN BANK AND TRUST COMPANY	FOR WASHINGTON
A Body Corporate	COUNTY

Upon the filing of a proper Bill of Complaint and other necessary prerequisites, including an answer by The Hagerstown Bank and Trust Company admitting insolvency, the following Decree was passed:

DECREE

STATE OF MARYLAND	IN THE CIRCUIT
Vs.	COURT
HAGERSTOWN BANK AND TRUST COMPANY	FOR WASHINGTON
A Body Corporate	COUNTY IN EQUITY

Upon the aforegoing Bill, Affidavit and Answer, it is this 3rd day of December, in the year Nineteen Hundred and Thirty-Four, by the Circuit Court for Washington County, ORDERED that John J. Ghingher, Bank Commissioner for the State of Maryland, be, and he is hereby named and continued as Receiver for the Hagerstown Bank and Trust Company, a body corporate, with power and authority to take charge and possession of the books, papers, property and effects of every kind belonging to the said Hagerstown Bank and Trust Company, and to collect the outstanding debts due to the said institution, and to employ all necessary clerical or other assistance in the performance of his duties as Receiver; that the said Hagerstown Bank and Trust Company, its officers, agents and employees be required to yield up and deliver to the said Receiver the books, papers, property and effects of every kind belonging to said institution, subject to the further order of this Court.

And it is further ordered that the said John J. Ghingher, as Receiver, be required to give bond to the State of Maryland in the penalty of Three Hundred Thousand Dollars with corporate surety to be approved by this Court or the Clerk thereof; conditioned for

the faithful performance of the trust reposed in him by this order, and by the provisions of law, or which may be reposed in him by any further order or decree that may be passed in the premises.

FRANK G. WAGAMAN.

Filed Dec. 3, 1934.

Pursuant to the aforegoing Decree, John J. Ghingher, Bank Commissioner of the State of Maryland duly qualified as such Receiver.

PETITION OF RECEIVER FOR DETERMINATION OF LIABILITY OF STOCKHOLDERS AND ORDER OF COURT THEREON.

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

To the Honorable, the Judges of said Court:

This, the petition of John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, respectfully represents:—

1.—That the said The Hagerstown Bank and Trust Company was originally incorporated under the name of Maryland Surety and Guaranty Company, by Chapter 298 of the Acts of the General Assembly of Maryland of 1902; that its charter was thereafter amended by Chapter 215 of the Acts of the General Assembly of Maryland of 1904; that said charter was again amended by Chapter 410 of the Acts of the General Assembly of Maryland of 1908, wherein the name of said corporation was changed to that of The Maryland Surety and Trust Company; that the aforesaid charter was again amended by Articles of Amendment, dated December 4, 1928, and recorded in the Record of Incorporations, Liber No. 3, folio 52, one of the Records in the office of the Clerk of the Circuit Court for Washington County, Maryland, wherein the name of said corporation was changed to that of The Hagerstown Bank and Trust Company.

2.—That for a great many years the said The Hagerstown Bank and Trust Company had been conducting a general banking and trust business, with its

principal office in the City of Hagerstown, Washington County, Maryland.

3.—That the total amount of capital stock of said corporation is $550,000, divided into 55,000 shares of the par value of $10.00 each, all of which stock has been issued and is now outstanding.

4.—That by Section 39 of Article III, of the Constitution of Maryland, it is provided as follows:

"The General Assembly shall grant no charter for Banking purposes, nor renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon note, bill or otherwise; . .

And by Section 72 of Article 11 of Bagby's Annotated Code of Maryland, Edition of 1924, it is provided as follows:

"Stockholders of every bank and trust company shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of every such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such stock. Persons having stock entered on the books of the corporation in their names as executor, administrator, guardian, trustee or pledgee, shall not be personally subject to any liability on such stock, but the one pledging stock, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be subject to the liability imposed upon the holders of said shares; and the liability of such stockholders shall be an asset of the corporation for the benefit ratably of all the depositors and creditors of any such corporation, if necessary to pay the debts of such corporation, and shall be enforceable only by appropriate proceedings by a Receiver, assignee or trustee of such corporation acting under the orders of a court of competent jurisdiction. Nothing in this section or article shall be construed to repeal or affect the existing rights of creditors or liabilities of stockholders of any trust company under the existing law at the time of the passage or taking effect of this article."

5.—That in the course of the liquidation of the affairs of the said The Hagerstown Bank and Trust Company, under the supervision of this Honorable Court,

your Petitioner has had an opportunity to ascertain the probable value of its property and the collectibility of its choses in action, and while it is impossible at this time to state the exact amount of the deficiency between the amount which will be realized in the final liquidation of the said bank, and the aggregate amount of its contracts, debts and engagements, your Petitioner is in a position to state, with absolute certainty, and therefore alleges that said deficiency will be far in excess of $550,000.00, the aggregate par value of the authorized, issued and outstanding shares of the capital stock of the said corporation, that is to say, the payment in full of a sum equal to the par value of all the shares of the authorized capital stock of said bank, taken with all its other assets, will not discharge in full all of its contracts, debts and engagements, and your Petitioner therefore alleges that it is necessary and proper that each stockholder of said bank be called upon to pay to your Petitioner a sum equal to the par value of the share or shares of stock held by him.

Wherefore, your petitioner prays that an order be passed determining and adjudging that each stockholder of said bank be called upon and required to pay your Petitioner a sum equal to the par value of the share or shares of stock held by him, and that your Petitioner be authorized and directed to collect said sums of money and enforce payment thereof by appropriate legal proceedings.

Respectfully submitted
JOHN J. GHINGHER,
Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company.

Edw. Oswald, Jr.,
Attorney for Petitioner.

STATE OF MARYLAND,
CITY OF BALTIMORE, To wit:

I hereby certify that on this 14th day of January, 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, and made oath in due form of law that the matters and facts set forth in the aforegoing petition are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal the day and year last above mentioned.

(N. P. SEAL) Winifred A. Duggan, Notary Public.

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

Upon the aforegoing petition and affidavit, it is this 16th day of January, 1935, adjudged, ordered and decreed by the Circuit Court for Washington County, sitting as a Court of Equity, that each stockholder of The Hagerstown Bank and Trust Company be, and he is hereby required to pay to John J. Ghingher, Bank Commissioner, Receiver for the said The Hagerstown Bank and Trust Company, or his successor in trust, an amount of money equal to the par value of the share or shares of the capital stock of said The Hagerstown Bank and Trust Company held by him, and it is further ordered that John J. Ghingher, Bank Commissioner as Receiver for The Hagerstown Bank and Trust Company, or his successor in trust, be and he is hereby authorized and empowered to collect said sums of money and to enforce payment thereof by appropriate legal proceedings; provided that notice of the filing of said petition, containing the substance of the allegations thereof, together with a copy of this order, be mailed, postage prepaid, on or before the 24th day of January, 1935, to each of said stockholders, at his, her or its residence or place of business, as the same shall appear on the books of the said The Hagerstown Bank and Trust Company; and provided further that no good cause to the contrary be shown to this Court on or before the 23rd day of February, 1935.

Frank G. Wagaman

Filed Jany. 16th, 1935.

ANSWER OF JOHN S. KAUSLER SHOWING CAUSE AGAINST IMPOSITION OF DOUBLE STOCK LIABILITY AND AFFIDAVIT THERETO.

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

To the Honorable, the Judges of said Court:

This, the answer of John S. Kausler, one of the stockholders of The Hagerstown Bank and Trust Company, to the petition of John J. Ghingher, Bank Commissioner, Receiver of The Hagerstown Bank and Trust Company, and to the order passed by this Honorable Court on said petition requiring each stockholder of The Hagerstown Bank and Trust Company to show cause, which said petition and order were filed in this cause on January 16, 1935, respectfully represents:

1.—That this respondent admits the allegations in the 1, 2, 3, and 4th paragraphs of said petition.

2.—Answering the 5th paragraph of said petition and the order to show cause this respondent alleges that even upon a showing of insolvency this Honorable Court is without jurisdiction and power to pass said order.

3.—That this respondent is the owner of 135 shares of the par value of $10.00 each of the capital stock of The Hagerstown Bank and Trust Company, which this respondent has acquired at various times, various parts or blocs of which this respondent has held and owned for definite periods of time, some of which he has held and owned since the 25th day of February, 1922, and some of which he has owned only since the 17th day of February, 1933.

4.—That there is before this Honorable Court no proper allegation or proof of the time or times when the various liabilities of said corporation accrued against it nor as to the names and stockholdings of persons who were at said times the owners of the shares of the capital stock of said corporation; and this respondent avers that under the laws of Maryland, he can be held liable, if at all, which he does not admit, upon the shares of stock of said corporation owned by him only for the payment of such debts and liabilities of said corporation as accrued against it at a time or times when he was the owner of the share or shares of said stock upon which said assessment is sought, but not, in any event, to the petitioner.

5.—That this respondent had on deposit with the said The Hagerstown Bank and Trust Company at the time of its closing $730.22 for which sum of money this respondent has a valid and subsisting claim against said bank and for which sum this respondent has a valid and subsisting claim, if anyone has, against the various stockholders thereof; and this respondent says that he is entitled to and claims the right to set off his said deposit claim against the double stock liability, if any, upon the aforesaid shares.

6.—That the provisions of Section 72 of Article 11 of Bagby's Annotated Code of Maryland, Edition of 1924, as in said petition referred to, under and by virtue of which said order was passed, impair the obligation of contracts, are discriminatory and deprive this respondent as a stockholder and creditor of said bank of equal protection of the law, deprive this respondent as a stockholder and creditor of said bank of property without due process of law and otherwise contravene the provisions of the Constitutions of Maryland and of the United States.

7.—That for the causes hereinbefore shown as well as for other causes to be shown at the hearing of this matter, this respondent says that no order of assessment should be passed or made final authorizing John J. Ghingher, Bank Commissioner, Receiver of said The Hagerstown Bank and Trust Company, to collect any assessment from this respondent in this cause.

Wherefore, having fully answered said petition and said order, this respondent prays that the aforesaid petition and order to show cause may be dismissed and discharged with reasonable costs to this respondent.

Respectfully submitted,
John Wagaman,
Charles F. Wagaman,
Solicitiors for Petitioners.

STATE OF MARYLAND,
WASHINGTON COUNTY, To wit:

I hereby certify, That on this 27th day of March, A. D., 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the county aforesaid, personally appeared John S. Kausler, who made oath in due form of law that the matters and facts set forth in the aforegoing petition are true to the best of his knowledge, information and belief.

In witness whereof I have hereunto subscribed my

name and affixed my notarial seal this day and year last above written.

(N. P. SEAL) Stella I. Sleasman, Notary Public.

Filed March 28th, 1935.

Other answers to said petition substantially identical in form and substance with the answer of John S. Kausler were filed by various other stockholders of said bank as is shown by the Docket Entries. All of said answers were filed within the time fixed by the Court.

ANSWER OF IDA M. NEWCOMER AND JOSEPH W. HOWE, EXECUTRIX and EXECUTOR, TO PETITION OF JOHN J. GHINGHER, RECEIVER AND ORDER OF COURT THEREON

STATE OF MARYLAND	NO. 12,777 EQUITY
Vs.	
THE HAGERSTOWN BANK AND TRUST COMPANY,	IN THE CIRCUIT COURT FOR WASHINGTON
A Body Corporate	COUNTY

To the Honorable, the Judges of said Court:

This, the answer of Ida M. Newcomer and Joseph W. Howe, Executrix and Executor of the Last Will and Testament of Joseph S. Newcomer, late of Washington County, State of Maryland, deceased, to the Petition of John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, and to the Order and Decree of this Honorable Court, passed upon said Petition as of the 16th day of January, 1935, requiring stockholders of the said The Hagerstown Bank and Trust Company to show cause why they should not be required to pay the Receiver of said Corporation an amount equal to the par value of the shares of the capital stock by them held, respectfully represents:

1.—That these Respondents admit the averments of the first paragraph of said petition.

2.—That these Respondents admit the averments of the second paragraph of said Petition.

3.—That these Respondents admit the averments of the third paragraph of said Petition.

4.—That these Respondents admit the averments of the fourth paragraph of said Petition.

5.—Answering the fifth paragraph of said petition

and the order of this Honorable Court, requiring cause to be shown, these Respondents aver and say:

a.—That these Respondents obtained Letters Testamentary on the estate of Joseph S. Newcomer, late of Washington County, State of Maryland, deceased, on the 23rd day of January, 1934, having been named and designated as Executrix and Executor by the Last Will and Testament of said decendent, duly recorded in the office of the Register of Wills for said Washington County.

b.—That they found amongst the assets of the said decedent two certificates of the capital stock of the said The Hagerstown Bank and Trust Company, both being dated the 28th day of December, 1928, and being respectively for forty (40) shares and for fifty (50) shares, or a total of ninety (90) shares, the par value thereof being Ten ($10.00) Dollars per share.

c.—That on the date that Letters Testamentary were granted, these Respondents caused the usual Notice to Creditors to be given in conformity with the Statute Law of the State of Maryland, and after the expiration thereof stated a First and Final Account in the matter of the settlement of said estate, in which payment was made to creditors on a basis of less than eleven per cent, the property and assets of said decedent being insufficient to discharge and pay debts and obligations due by him.

d.—That no claim was filed or asserted in said Orphans' Court by the said Petitioner with reference to any liability by said decedent, by reason of his stockholdings in the said The Hagerstown Bank and Trust Company.

e.—That notwithstanding the insolvency of the said The Hagerstown Bank and Trust Company, this Honorable Court is without jurisdiction and power to pass said Order.

f.—That these Respondents reiterate and aver that the settlement of their said decedent's estate, as hereinbefore set forth, constitutes and is a barrier to any recovery by reason of said decedent holding shares of the capital stock of said Bank, as hereinbefore set forth; but as a matter of further Answer these Respondents say that there is before this Honorable Court no proper allegation or proof of the time or times when the various liabilities of said Corporation accrued against it nor as to the names and stockholdings of the persons

who were at said times the owners of the shares of the capital stock of said Corporation; and these Respondents aver that under the Laws of Maryland, the estate of said decedent, even if solvent and not fully administered could have been held liable, if at all, upon the shares of the stock of said corporation owned by the said Joseph S. Newcomer, deceased, only for the payment of such debts and liabilities of said Corporation as accrued against it at a time or times when said decedent was the owner of the share or shares of said stock, upon which said assessment is sought, but not in any event to the Petitioner.

g.—That the provisions of Section 72 of Article 11 of the Annotated Code of Maryland, as in said Petition referred to, under and by virtue of which said Order was passed, impair the obligation of contracts, are discriminatory and deprive these Respondents, as representatives of the said deceased stockholder, of equal protection of the Law, deprive these Respondents, as representatives of the said deceased stockholder, of property without due process of Law and otherwise contravene the provisions of the Constitutions of Maryland and of the United States.

6.—That for the causes and reasons hereinbefore shown and averred and for other reasons to be assigned at the hearing these Respondents say that no Order should be passed or made final, authorizing the Petioner, John J. Ghingher, Bank Commissioner, Receiver of the said The Hagerstown Bank and Trust Company, to collect any assessment or to seek to establish liability with reference thereto, on account of the stockholdings of these Respondents' decedent.

Having fully answered said Petition and the said Order requiring stockholders of the said The Hagerstown Bank and Trust Company to show cause, these Respondents pray that said Order be not made final and that said Petition be dismissed with reasonable costs to these Respondents.

Respectfully submitted.

Levin Stonebraker,
Solicitor for Respondent.

STATE OF MARYLAND,
WASHINGTON COUNTY, to wit:

I hereby certify that on this 28th day of March, A. D., 1935, before the subscriber, a Notary Public of the State of Maryland, in and for Washington County, per-

sonally appeared Ida M. Newcomer, Executrix of the Last Will and Testament of Joseph S. Newcomer, late of Washington County, State of Maryland, deceased, respondent, and made oath in due form of law that the matters and facts set forth and averred in the foregoing Answer are true to the best of her knowledge, information and belief.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal the day and year first above written.

(N. P. SEAL) E. Jane Carty, Notary Public.

Filed March 28th, 1935.

ANSWER OF SARAH R. HOFFMAN, Executrix, TO PETITION OF JOHN J. GHINGHER, RECEIVER AND ORDER OF COURT THEREON

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

To the Honorable, the Judges of said Court:

This, the answer of Sarah R. Hoffman, Executrix of the Last Will and Testament of William K. Hoffman, late of Washington County, State of Maryland, deceased, to the Petition of John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, and to the Order and Decree of this Honorable Court, passed upon said Petition as of the 16th day of January, 1935, requiring stockholders of the said The Hagerstown Bank and Trust Company to show cause why they should not be required to pay the Receiver of said Corporation an amount equal to the par value of the shares of the capital stock by them held, respectfully represents:

1.—That this Respondent admits the averments of the first paragraph of said Petition.

2.—That this Respondent admits the averments of the second paragraph of said Petition.

3.—That this Respondent admits the averments of the third paragraph of said Petition.

4.—That this Respondent admits the averments of the fourth paragraph of said Petition.

5.—Answering the fifth paragraph of said petition and the Order of this Honorable Court, requiring cause to be shown, this Respondent avers and says:

a.—That this Respondent obtained Letters Testamentary on the estate of William K. Hoffman, late of Washington County, State of Maryland, deceased, on the 11th day of October, 1932, having been named and designated as Executrix by the Last Will and Testament of said decedent, duly recorded in the office of the Register of Wills for said Washington County.

b.—That she found amongst the assets of the said decedent a certificate of the capital stock of the said The Hagerstown Bank and Trust Company, being dated the 24th day of September, 1929, and being for twenty-two (22) shares, the par value thereof being Ten ($10.-00) Dollars per share.

c.—That on the date that Letters Testamentary were granted, this Respondent caused the usual Notice to Creditors to be given in conformity with the Statute Law of the State of Maryland, and after the expiration thereof stated a First and Final Account in the matter of the settlement of said estate, in which, after the payment of creditors, the property and assets of said decedent were distributed to Sarah R. Hoffman, wife of said decedent, in accordance with the provisions of his Will.

d.—That no claim was filed or asserted in said Orphans' Court by the said Petitioner with reference to any liability of said decedent, by reason of his stockholdings in the said The Hagerstown Bank and Trust Company.

e.—That notwithstanding the insolvency of the said The Hagerstown Bank and Trust Company, this Honorable Court is without jurisdiction and power to pass said Order.

f.—That this Respondent reiterates and avers that the settlement of her said decedent's estate, as hereinbefore set forth, constitutes and is a barrier to any recovery by reason of said decedent holding shares of the capital stock of said Bank, as hereinbefore set forth; but as a matter of further Answer, this Respondent says that there is before this Honorable Court no proper allegation or proof of the time or times when the various liabilities of said Corporation accrued against it nor as to the names and stockholdings of the persons who were at said times the owners of the shares of the

capital stock of said corporation; and this Respondent avers that under the Laws of Maryland the estate of said decedent, if solvent, can be held liable, if at all, upon the shares of the stock of said Corporation owned by the said William K. Hoffman, deceased, only for the payment of such debts and liabilities of said Corporation as accrued against it at a time or times when said decedent was the owner of the share or shares of said stock, upon which said assessment is sought, but not in any event to the Petitioner.

g.—That the provisions of Section 72 of Article 11 of the Annotated Code of Maryland, as in said Petition referred to, under and by virtue of which said Order was passed, impair the obligation of contracts, are discriminatory and deprive this Respondent, as representative of the said deceased stockholder, of equal protection of the Law, deprive this Respondent, as representative of the said deceased stockholder, of property without due process of Law and otherwise contravene the provisions of the Constitutions of Maryland and of the United States.

6.—That for the causes and reasons hereinbefore shown and averred and for other reasons to be assigned at the hearing, this Respondent says that no Order should be passed or made final, authorizing the Petitioner, John J. Ghingher, Bank Commissioner, Receiver of the said The Hagerstown Bank and Trust Company, to collect any assessment or to seek to establish liability with reference thereto, on account of the stockholdings of this Respondent's decedent.

Having fully answered said Petition and said Order requiring stockholders of the said The Hagerstown Bank and Trust Company to show cause, this Respondent prays that said Order be not made final and that said Petition be dismissed with reasonable costs to this Respondent.

Respectfully submitted,
Levin Stonebraker,
Solicitor for Respondent.

STATE OF MARYLAND,
WASHINGTON COUNTY, to wit:

I hereby certify that on this 27th day of March, A. D., 1935, before me the subscriber, a Notary Public of the State of Maryland, in and for Washington County, personally appeared Sarah R. Hoffman, Executrix of the Last Will and Testament of William K. Hoffman, late of Washington County, State of Maryland, deceased, Re-

spondent, and made oath in due form of law that the matters and facts set forth and averred in the foregoing Answer are true to the best of her knowledge, information and belief.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal the day and year first above written.

(N. P. SEAL) E. Jane Carty, Notary Public.

Filed March 28th, 1935.

RECEIVER'S REPORT AND STATEMENT OF ASSETS AND LIABILITIES IN CONNECTION WITH THE ASSESSMENT OF STOCKHOLDERS

STATE OF MARYLAND Vs. THE HAGERTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

To the Honorable, the Judges of said Court:

The report of John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, respectfully represents:

1.—That on the 16th day of January, 1935, your Receiver filed a petition in the above entitled cause in which he prayed this Honorable Court to pass an order determining and adjudging that each stockholder of The Hagerstown Bank and Trust Company be called upon and required to pay to your Receiver a sum equal to the par value of the share or shares of stock held by such stockholder, and that your Receiver be authorized and empowered to collect said sums of money and enforce the payment thereof by appropriate legal proceedings.

2.—That upon the aforesaid petition an order of Court was passed granting the relief prayed for, provided that notice of the filing of said petition, containing the substance of the allegations thereof, together with a copy of said order, be mailed, postage prepaid, on or before the 24th day of January, 1935, to each of the stockholders of the said The Hagerstown Bank and Trust Company, at his, her or its residence or place of business, as the same should appear on the books of the said The Hagerstown Bank and Trust Company, and provided further that no good cause to the contrary be

shown to the Court on or before the 23rd day of February, 1935.

3.—That pursuant to the aforesaid order of Court, notice of the filing of said petition, together with a copy of said order of Court, was mailed, postage prepaid, on the 23rd day of January, 1935, to each of said stockholders, at his, her or its address or place of business, as the same appeared upon the books of the said The Hagerstown Bank and Trust Company, a printed copy of said notice and a printed copy of said order of Court, as mailed to each of said stockholders, as aforesaid, being filed herewith as a part hereof.

4.—That the aforesaid petition filed by your Receiver contains among other things the following allegations, to wit: "That in the course of the liquidation of the affairs of the said The Hagerstown Bank and Trust Company, under the supervision of this Honorable Court, your Petitioner has had an opportunity to ascertain the probable value of its property and the collectibility of its choses in action, and while it is impossible at this time to state the exact amount of the deficiency between the amount which will be realized in the final liquidation of the said bank, and the aggregate amount of its contracts, debts and engagements, your Petitioner is in a position to state, with absolute certainty, and therefore alleges, that said deficiency will be far in excess of $550,000.00, the aggregate par value of the authorized, issued and outstanding shares of the capital stock of the said corporation, that is to say, the payment in full of a sum equal to the par value of all the shares of the authorized capital stock of said Bank, taken with all its other assets, will not discharge in full all of its contracts, debts and engagements;" that there has now been prepared a statement of the assets and liabilities of the said The Hagerstown Bank and Trust Company as of January 16, 1935, the date of the filing of the aforesaid petition, showing the estimated recovery value of the assets of the said The Hagerstown Bank and Trust Company, without deduction for costs and expenses of liquidation, and assuming the collection of 100% of the stockholders' liability in full, which statement is filed herewith as a part hereof, and from which it will appear that the payment in full of said stockholders' liability when taken with the estimated recovery value of all other assets of the said The Hagerstown Bank and Trust Company, without deduction for costs and expenses of the liquidation of said assets, will not be sufficient to discharge in full all of its

contracts, debts and engagements, and that the deficiency will amount to the estimated sum of $1,722,134.32.

Respectfully submitted,
John J. Ghingher,
Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company.

(CORP. SEAL)
J. Lloyd Harshman
Robt. H. McCauley
Special Council.

NOTICE TO STOCKHOLDERS OF THE HAGERSTOWN BANK AND TRUST COMPANY HAGERSTOWN, MARYLAND

Notice is hereby given that on the 16th day of January, 1935, a petition was filed in the Circuit Court for Washington County, Maryland, in a cause wherein the State of Maryland is Plaintiff and The Hagerstown Bank and Trust Company is the Defendant, known on the docket of said Court as Equity Cause No. 12,777; that said petition was filed by John J. Ghingher, Bank Commissioner, Receiver for the said The Hagerstown Bank and Trust Company, and alleges, among other things, the following:

That The Hagerstown Bank and Trust Company is a corporation, duly incorporated under the Laws of the State of Maryland; that for a great many years, said corporation conducted a general banking and trust business, with its principal office in the City of Hagerstown, Maryland; that the total amount of capital stock of said corporation is $550,000.00, divided into 55,000 shares of the par value of $10.00 each, all of which stock has been issued and is now outstanding; that under the Laws of the State of Maryland, the stockholders of said corporation are liable to the amount of their respective shares of stock for all of its debts and liabilities, and reference is made to Section 39 of Article III of the Constitution of Maryland, and to Section 72 of Article 11 of Bagby's Annotated Code of Maryland, Edition of 1924; that in the course of the liquidation of the affairs of said corporation, said Receiver has ascertained the probable value of its property and the collectibility of its choses in action and while it is impossible to state the exact amount of the deficiency between the amount which will be realized in the final liquidation of said

corporation, and the aggregate amount of its contracts debts and engagements, it is alleged that said deficiency will be in excess of $550,000.00 the aggregate par value of the authorized, issued and outstanding shares of the capital stock of said corporation, and that payment in full of a sum equal to the par value of all of the shares of the authorized capital stock of said corporation, taken with all its other assets, will not discharge in full all of its contracts, debts and engagements, and that it is necessary and proper that each stockholder be called upon to pay to said Receiver a sum equal to the par value of the share or shares of stock held by him.

Upon the aforesaid petition an order of Court was passed, a copy of which is enclosed herewith.

John J. Ghingher, Bank Commissioner,
Receiver for The Hagerstown Bank & Trust Co.

COPY OF ORDER OF COURT

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

Upon the aforegoing petition and affidavit, it is this 16th day of January, 1935, adjudged, ordered and decreed by the Circuit Court for Washington County, sitting as a Court of Equity, that each stockholder of The Hagerstown Bank and Trust Company be, and he is hereby required to pay to John J. Ghingher, Bank Commissioner, Receiver for the said The Hagerstown Bank and Trust Company, or his successor in trust, an amount of money equal to the par value of the share or shares of the capital stock of said The Hagerstown Bank and Trust Company held by him, and it is further ordered that John J. Ghingher, Bank Commissioner as Receiver for The Hagerstown Bank and Trust Company, or his successor in trust, be, and he is hereby authorized and empowered to collect said sums of money and to enforce payment thereof by appropriate legal proceedings; provided that notice of the filing of said petition, containing the substance of the allegations thereof, together with a copy of this order be mailed postage prepaid, on or before the 24th day of Jan., 1935, to each of said stockholders, at his, her or its residence or place of business, as the same shall appear on the books of the said The

Hagerstown Bank and Trust Company; and provided further that no good cause to the contrary be shown to this Court on or before the 23rd day of February, 1935.

(Signed) Frank G. Wagaman.

STATEMENT OF ASSETS AND LIABILITIES OF THE HAGERSTOWN BANK AND TRUST COMPANY AS OF JANUARY 16, 1935, SHOWING ESTIMATED RECOVERY VALUE OF ASSETS WITHOUT DEDUCTION FOR COSTS AND EXPENSES OF LIQUIDATION AND ASSUMING COLLECTION OF 100% STOCKHOLDERS' LIABILITY IN FULL

Total Stockholders' Liability	$ 550,000.00	
Loans and discounts	1,699,518.38	
Mortgages	85,015.27	
Bonds and stocks	215,386.09	
Real estate (Appraisal)	141,826.00	
Cash and due from banks	41,754.55	
Emergency Loans (Secured)	20,992.38	
Furniture and fixtures	2,786.57	
Reserve balances in closed banks (estimated recovery)	7,500.00	
Due from Hagerstown Trust-Co. on Lease agreement	3,199.37	
Guaranty Fund (unsecured) Subscriptions unpaid	64,075.00	
Guaranty Fund (secured) Subscriptions unpaid	25,375.00	
Notes partly charged off	50,000.00	
Estimated recovery value of mortgages securing participations	114,440.00	
Bonds owned by subscribers to first Guaranty Fund	17,000.00	
	$3,038,868.61	
General Creditor Liability for deposits and other claims		$3,513,987.12
Bills payable for funds borrowed		297,710.71
Trust Deposits		11,272.61
Mortgage int. undistributed		1,527.50
Income from operation of mortgaged real estate		89.55
Income (Special Account)		305.00
Collections in Special Accts.		24,436.44

Collections in Trust for R. F. C.		234.00
Participations secured by mortgages		144,440.00
Due to Guaranty Fund Subscribers		750,000.00
Bonds due to Subscribers to First Guaranty Fund		17,000.00
Excess of Liabilities over Assets	$1,722,134.32	
	$4,761,002.93	$4,761,002.93

All cash and notes received from the Guaranty Fund are included in the above assets.

STATE OF MARYLAND,

CITY OF BALTIMORE, to wit:

I hereby certify that on this 17th day of June, 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company, and made oath in due form of law that the matters and facts set forth in the aforegoing report are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal the day and year last above mentioned.

(N. P. SEAL) Anna Mae Cooke, Notary Public.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I hereby certify that on this 18th day of June, 1935, before me, the subscriber, Clerk of the Circuit Court for Washington County, personally appeared Edward Oswald, Jr., and made oath in due form of law that he is the representative in direct charge of the affairs of The Hagerstown Bank and Trust Company for John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company and that notice of the filing of the petition of the Receiver, mentioned in the aforegoing report, together with a copy of the order of Court passed thereon, was duly mailed to stockholders at the time and in the manner as alleged in the third paragraph of said report.

Witness my hand and the seal of said Court the day and year last above mentioned.

(SEAL) Edward Oswald,
Clerk of the Circuit Court
for Washington County.

STATE OF MARYLAND,
WASHINGTON COUNTY, to wit:

I hereby certify that on this 18th day of June, 1935, before me, the subscriber, Clerk of the Circuit Court for Washington County, personally appeared J. William Ernst, and made oath in due form of law that he was the Treasurer of The Hagerstown Bank and Trust Company from January, 1921, to the date of its closing; that since the date of the closing of the said The Hagerstown Bank and Trust Company he has been actively engaged in the liquidation of its assets and is now in the employ of John J. Ghingher, Bank Commissioner, Receiver for the said The Hagerstown Bank and Trust Company; that he is familiar with the value of the property and assets of the said The Hagerstown Bank and Trust Company, including the collectibility of its choses in action and that the facts and figures shown on the statement of its assets and liabilities, as of January 16, 1935, and as mentioned and referred to in the aforegoing report, are true to the best of his knowledge, information and belief.

Witness my hand and seal of said Court the day and year last above mentioned.

(SEAL) Edward Oswald,
Clerk of the Circuit Court
for Washington County.

Filed June 21, 1935.

STIPULATION

STATE OF MARYLAND	NO. 12,777 EQUITY
Vs.	IN THE CIRCUIT COURT FOR WASHINGTON COUNTY
THE HAGERSTOWN BANK AND TRUST COMPANY,	
A Body Corporate	IN EQUITY

STIPULATION

It is hereby stipulated and agreed that for the purposes of the hearing on the matter of the assessment against stockholders in the above named bank and for

the determination of the Court thereon the facts herein shall be taken as duly proved by the evidence on behalf of the parties to this cause whose counsel appear as parties to this stipulation.

1.—That the respective times at which the various stockholders who are showing cause against the assessment in the above entitled cause acquired their said respective shares of stock are correctly set forth in the schedule hereto attached.

2.—That none of the stock outstanding at the time of the closing of the bank was issued prior to the amendment of the Charter in 1908 by Chapter 410 of the Acts of the General Assembly of Maryland of 1908 when its name was changed from Maryland Surety and Guaranty Company to Maryland Surety and Trust Company and that the first stock of said bank originally issued was issued on June 1, 1908, and that some of the shares of stock of said bank have been held and owned continuously by the same person or persons from June 1st, 1908, to the present time.

3.—That some of the stockholders who are showing cause against the assessment in the above entitled cause had, on the date of the closing of said bank, and now have, deposits in said bank.

4.—That some of the shares of stock outstanding at the time of the closing of The Hagerstown Bank and Trust Company were transferred to the record holders thereof who are showing cause herein at the time after some of the deposits were made and some of the liabilities incurred which were at the time of its closing, and are now, part of the obligations of said bank.

5—That without resort to the liability of stockholders the total assets of said bank will be insufficient to pay its liabilities to the extent of at least $550,000.00, and that unless recovery is made from stockholders of this bank, complete liquidation of its assets will leave more than $550,000.00 of its debts unsatisfied.

J. Lloyd Harshman
Robt. H. McCauley
Special Counsel for Receiver
John Wagaman
Charles F. Wagaman
W. P. Wachter
Martin V. B. Bostetter
C. Walter Baker
Attorneys for Stockholders.

Stockholders	No. of shares	Date acquired
Sidney F. Cushwa	20 shares	1- 3-29
Susan F. Cushwa	75 shares	3-13-29
	550½ shares	10-31-30
Sarah K. Hoffman, Exr.	12 shares	9-16-22
	10 shares	4- 3-23
Anna E. Miller	10 shares	6- 1-08
	5 shares	12- 1-19
	20 shares	8-29-22
Ida M. Newcomer	240 shares	12-29-28
Ida M. Newcomer, et al exr.	40 shares	12-29-28
	50 shares	12-29-28
John E. Stonebraker, Admr.	50 shares	5-27-10
	364 shares	10- 4-10
	90 shares	5- 2-11
	20 shares	5-31-11
	50 shares	12- 1-11
	50 shares	10- 4-13
	208 shares	12- 1-19
	10 shares	2-28-20
	50 shares	11- 8-20
	79 shares	1- 9-22
	29 shares	5-10-22
John S. Kausler	90 shares	12-21-28
	45 shares	2-17-33
Ardella M. Newcomer	100 shares	3- -1913
	33 shares	12- 1-19
	33 shares	8-29-22
W. P. Wachter	10 shares	3- 3-23
	5 shares	2-20-31
	10 shares	6- 2-31
Evelyn M. Wachter	1 share	1- 2-26
Mildred M. W. Fiery	1 share	1- 2-26
Julia H. Briscoe	79½ shares	12-20-28
Julia H. Briscoe, Trustee	2452½ shares	12-20-28
Ella B. Young	35 shares	6- 5-26
	25 shares	9-24-29
Wm. H. Miller	18 shares	12-27-28
Nora Miller Baker	100½ shares	1-18-29
C. Walter Baker	19½ shares	1-18-29
	34 shares	4-17-30
Gladys K. Bostetter	27 shares	1-18-29
Crystal Bostetter Hershey	28½ shares	1-18-29
	½ share	2- 4-29
Martin V. B. Bostetter	21 shares	1-18-29

Filed July 8, 1935.

STIPULATIONS

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

STIPULATIONS

It is hereby stipulated and agreed that for the purposes of the hearing on the matter of the assessment against stockholders in the above named Bank and for the determination of the Court thereon the facts herein shall be taken as duly proved by the evidence on behalf of the parties to this Cause, whose counsel appear as parties to this stipulation.

STIPULATION AND AGREEMENT IN CONNECTION WITH ANSWER OF IDA M. NEWCOMER AND JOSEPH W. HOWE, EXECUTRIX AND EXECUTOR OF JOSEPH S. NEWCOMER, DECEASED

a.—That the said Executrix and Executor obtained Letters Testamentary on the estate of their said decedent on the 24th day of January, 1934.

b.—That amongst the assets of said estate were two certificates representing forty (40) shares of the stock of The Hagerstown Bank and Trust Company.

c.—That notice to creditors was published in conformity with the statutory law of the State of Maryland, and after the expiration thereof, said Executrix and Executor stated a First and Final Account to wit: on the 28th day of September, 1934, in which payment was made to creditors on a basis of less than eleven per cent.

d.—That no claim was filed or asserted in the Orphans' Court by The Hagerstown Bank and Trust Company, John J. Ghingher, Receiver thereof, or by anyone on behalf of said Trust Company in connection with any liability of said decedent on account of his stockholdings in the said The Hagerstown Bank and Trust Company.

STIPULATION AND AGREEMENT IN CONNECTION WITH ANSWER OF SARAH R. HOFFMAN, EXECUTRIX OF WILLIAM K. HOFFMAN, DECEASED

a.—That the said Executrix obtained Letters Tes-

tamentary on the estate of her said decedent on the 11th day of October, 1932.

b.—That amongst the assets of said estate was a certificate representing twenty-two (22) shares of the stock of The Hagerstown Bank and Trust Company.

c.—That notice to creditors was published in conformity with the statutory law of the State of Maryland, and after the expiration thereof said Executrix stated a First and Final Account, to wit: on the 2nd day of November, 1934, in which payment was made to creditors in full.

d.—That no claim was filed or asserted in the Orphans' Court by The Hagerstown Bank and Trust Company, John J. Ghingher, Receiver thereof, or by anyone on behalf of said Trust Company, in connection with any liability of said decedent on account of his stockholdings in the said The Hagerstown Bank and Trust Company.

Robt. H. McCauley,
J. Lloyd Harshman,
Special Counsel for Receiver.
Levin Stonebraker,
Attorney for Ida M. Newcomer and Joseph W. Howe, Executrix and Executor of Joseph S. Newcomer, deceased.
Levin Stonebraker,
Attorney for Sarah R. Hoffman, Executrix of William K. Hoffman, deceased.

Filed July 8th, 1935.

EVIDENCE

STATE OF MARYLAND	NO. 12,777 EQUITY
Vs.	IN THE CIRCUIT
HAGERSTOWN BANK	COURT FOR
& TRUST COMPANY	WASHINGTON
	COUNTY

Attys. for Receiver:

Robert H. McCauley,
J. Lloyd Harshman.

Attys. for Stockholders:

Wagaman & Wagaman,
Doub,
Wachter,

Stonebraker,
Bostetter and
Baker.

Monday, July 8th, 1935

Counsel for Receiver offer in evidence—

Chapter 298 of the Acts of Maryland of 1902;
Chapter 215 of the Acts of Maryland of 1904;
Chapter 410 of the Acts of Maryland of 1908;
Certified copy of the Amendment to the Charter of the Bank, approved by the Bank Commissioner on Dec. 6, 1928.

"EXHIBIT NO. 1"

ARTICLES OF AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE MARYLAND SURETY & TRUST COMPANY

THIS IS TO CERTIFY, That, at a meeting of the Board of Directors of the Maryland Surety and Trust Company, of Hagerstown, Maryland, held on the 23rd day of October, 1928, at which more than a majority of the said Board were present, a motion was duly made, seconded and unanimously carried, that the Board of Directors of the Maryland Surety and Trust Company of Hagerstown, Maryland, recommend to the stockholders of the Corporation,

(1) That the name of the Corporation be changed from "The Maryland Surety and Trust Company", to "The Hagerstown Bank and Trust Company";

(2) That the capital stock of the corporation be increased from Two Hundred Fifty Thousand Dollars ($250,000.00) to Five Hundred Fifty Thousand Dollars ($550,000.00) and that the number of authorized directors be increased to thirty and that the office of the chairman of the Board be created and the number of authorized Vice Presidents be increased to six; and that the Charter of the Corporation be amended to effect those results, and that a special meeting of the stockholders of the Corporation be called for the purpose of considering such recommendations of the Board, and taking such action thereon as may be deemed by them proper, in the premises.

That pursuant to a notice of a special meeting of the stockholders, sent to all of the stockholders of the Corporation in pursuance of the aforementioned action of the Board of Directors, and setting forth the objects of the meeting, as well as the time and place thereof, and giving the period of notice required by law, in the

premises, a meeting of the stockholders of The Maryland Surety and Trust Company of Hagerstown, Maryland, was duly held on the 30th day of November, 1928, at which the holders of more than two-thirds of the stock of the Corporation outstanding and entitled to vote were present; that at said meeting the aforementioned recommendation of the Board of Directors was duly read to the stockholders and by them considered; that thereupon, upon motion duly made, seconded and unanimously carried, it was resolved:

(a) That so much of Section One of Charter of Corporation of the Maryland Surety and Trust Company, as follows:

"..... shall and they are hereby constituted a body politic and corporate by the name and style of "The Maryland Surety and Trust Company" "..... be and the same is hereby changed to read as follows:

"..... shall and they are hereby constituted a body politic and corporate by the name and style of "The Hagerstown Bank and Trust Company....."

(b) That Section Two of the Charter of the Corporation as follows:

"Section 2. And be it enacted, that the capital stock of the said Company shall consist of Fifteen Thousand shares of the par value of ten dollars each, aggregating One Hundred and Fifty Thousand Dollars, with the privilege to said corporation to increase the same from time to time of Two Hundred and Fifty Thousand Dollars by a vote of a majority of the stockholders at its general meeting or at a special meeting to be called for that purpose, and the incorporators, or their successors or a majority of them shall have the power to open books for subscriptions at such times and places as they may deem expedient, and when a majority of such shares shall have been subscribed and ten per centum thereof has been paid in, the stockholders may elect directors not less than than ten and not more than twenty-two in number to serve until the next annual meeting or until their successors have been duly elected and qualified, and the Directors so elected by said Company and their successors, are hereby authorized and empowered to enjoy and exercise all the rights, powers and privileges which are intended to be hereby given, and whenever the capital stock shall be at any time increased, the stockholders at the time of such increase shall be entitled to subscribe to a pro rata share of said increase

on the payment of the price that may be fixed by the Board of Directors," ----------

be and the same is hereby changed and a new Section Two A be added, all of which shall read as follows:

"Section 2.—The total amount of the capital stock of the Company is Five Hundred Fifty Thousand Dollars ($550,000.00) divided into fifty-five thousand (55,000) shares of the par value of Ten Dollars ($10.00) each."

"Section 2A.—That the Company shall have not less than ten nor more than thirty directors."

The price to be paid for the new stock is Thirty-Five Dollars ($35.00) per share.

(c) That Section Three of the Charter of the Corporation as follows:

"Section 3.—And be it enacted, that the directors shall be elected annually by the stockholders on the Second Monday in January, and they shall elect from their number at the first meeting of the Board after their election, as prescribed by the second section of this Act, and after all subsequent elections, a president and two vice-president..., and shall also have power to elect a secretary and treasurer, and to appoint and employ such other officers, clerks and agents, as the business of said company from time to time requires; the election shall be by ballot, and at such elections and all meetings of stockholders every stockholder shall be entitled to one vote for every share of stock held by him, but no person shall be eligible as director who is not a stockholder to the amount of twenty-five (25) shares of stock."

be and the same is hereby changed to read as follows.

"SECTION 3.—That the directors shall be elected annually by the stockholders on the Second Monday in January, and they shall elect from their number at the first meeting of the board after their election, a Chairman of the Board, a President, Vice-Presidents, not to exceed six in number, and they shall also have power to elect or appoint a Secretary, Treasurer, and Trust Officer, and such other officers as they may deem necessary, who need not be members of the board, but no person shall be eligible as director who is not a stockholder to the amount of twenty-five (25) shares of stock."

That at said meeting of stockholders of the Mary-

land Surety & Trust Company, it was further resolved that a certificate be executed by the proper officers of the Corporation, as is hereby done, setting forth the said Amendments, of the Charter of the Corporation, and that such further action be taken in the premises by the proper officers of the Corporation as may be requisite to render the said Amendment effectual.

IN WITNESS WHEREOF, the President and Secretary of the Maryland Surety and Trust Company have hereunto affixed their signatures this 4th day of December, 1928, and certify that the foregoing resolutions were passed as above set forth, and the said President and Secretary have further acknowledged this Certificate of Amendment for and on behalf of said Corporation.

WM. P. LANE,
President of the Maryland Surety & Trust Company.

(CORP. SEAL)

EDWIN C. HOOK,
Secretary of the Maryland Surety & Trust Company.

STATE OF MARYLAND,
COUNTY OF WASHINGTON ss:

I hereby certify that on this 4th day of December, 1928, before me, the subscriber, a Notary Public of the State of Maryland, in and for Washington County, personally appeared William P. Lane, President of the Maryland Surety and Trust Company, and Edwin C. Hook, Secretary of said Bank, and on behalf of the Maryland Surety and Trust Company, each acknowledged the foregoing Certificate of Amendment as the act and deed of said Corporation.

Witness my hand and notarial seal.

(N. P. SEAL) Wm. E. Green, Notary Public.

CERTIFICATE OF APPROVAL OF
BANK COMMISSIONERS:—

I do hereby approve the foregoing Certificate of Amendment to the Charter of the Maryland Surety and Trust Company.

As witness my hand this 6th day of December, 1928.

George W. Page,
Bank Commissioner of the State of Maryland.

I, Frank G. Wagaman, one of the Judges of the Cir-

cuit Court of Washington County, Maryland, do hereby certify that the foregoing Certificate has been submitted to me for examination, and I do further certify that the said Certificate is executed in conformity with the law.

Frank G. Wagaman, Judge.

OPINION OF COURT

STATE OF MARYLAND	NO. 12,777 EQUITY
Vs.	IN THE CIRCUIT
HAGERSTOWN BANK	COURT FOR
& TRUST COMPANY,	WASHINGTON
A Body Corporate	COUNTY

John J. Ghingher, Bank Commissioner, Receiver of the Hagerstown Bank and Trust Co., filed his petition wherein he states, that it is necessary in the liquidation of The Hagerstown Bank and Trust Co. that an assessment be made against all of the stockholders of that Company in an amount equal to the shares of stock respectively held by them. On this petition an order was passed, requiring each of said stockholders to pay to the said Receiver an amount equal to the par value of the share or shares of the capital stock of said Company held by him, unless cause to the contrary be shown. Notice was also required by said order to be given to each of said stockholders of the substance of the petition, together with a copy of the order. Answers were filed by numerous stockholders, denying the right of the Court to pass such an order. Hearing was had upon petition and answers, and such record evidence offered as was necessary to present the questions on their merits.

The Hagerstown Bank and Trust Co. was incorporated under the name of the Maryland Surety and Guaranty Co. by the Act of 1902, Chap. 298, the Charter amended by the Act of 1904, Chap. 215, and again amended and the name changed to Maryland Surety and Trust Company by the Act of 1908, Chap. 410. Later by amendment, under the general law, its name was changed to the Hagerstown Bank and Trust Co.

The Act imposing stockholders' liability on trust companies was Chap. 109 of the Acts of 1892, Sec. 85L. The measure of liability under this section being what is commonly known as triple liability, or an assessment in addition to the par value of shares originally of 200 per cent, which was reduced to a double liability, or an additional 100 per cent by Chap. 101 of the Acts of 1904.

All the legislation which distinguished the liability of the stockholders of banks and trust companies has been repealed, and the Act of 1910, Chap. 219, Code, Art. II, Sec. 72 is now applicable to both. The result is, there is now no difference as to rights and liabilities of stockholders in the two kinds of corporations.

What has been said in the opinion this day filed in the case of the Peoples Banking Company of Smithsburg, No. 12,277 Equity, is equally applicable to the questions presented by the petitions and answers in this case, and the opinion in that case is adopted as the opinion in this.

Anything which was there said with respect to the liability of stockholders, whether they be stockholders of record at the time of the receivership or stockholders who had transferred their stock before the receivership, is, if anything, more clearly said by Chap. 410, of the Acts of 1908, amending the Charter of the Hagerstown Bank and Trust Co., because there is incorporated in that Act these words, "The liabilities of the stockholders shall at all times be determined by the laws of the State in force at the time the said liabilities may attach." This provision is exactly the construction put upon the Constitutional provision Art. 3, Sec. 39, and the statutes passed in pursuance thereof, by the cases mentioned in the opinion of the Peoples Banking Company Case.

There is no point to any distinction between trust companies engaged in banking business and banks which are not engaged in a trust business. When a trust company engages in or is authorized to engage in and pursues the business of banking it is inescapably bound by the provisions of Sec. 39, of Art. 3, of the Constitution, and whether it be called a bank or a trust Company makes no difference if it is engaged in a banking business. The difference in liability under the Act of 1892 was an additional liability put upon banks which engaged in a trust business.

Further discussion of the facts and questions involved in this case, in view of the opinion in the other case, becomes unnecessary and the petition of the receiver filed on the 16th day of January, 1935, will be dismissed.

D. Lindley Sloan.

Filed July 27, 1935.

OPINION OF COURT

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

On the 5th day of April, 1933, the Bank Commissioner was appointed Receiver of The Peoples Banking Company of Smithsburg, hereinafter called Bank, and its affairs are now in the hands of the said Commissioner for the purpose of liquidation.

On June 19, 1933 this Court passed an order and decree requiring "each stockholder of the Peoples Banking Company of Smithsburg, Maryland, to pay to John J. Ghingher, Bank Commissioner, Receiver for the said "Bank" an amount of money equal to the par value of the share or shares of the capital stock of the said — Bank held by him, and further ordering and authorizing the Bank Commissioner to proceed by law with the collection of the assessment so made.

On Feb. 15, 1935, a large number of persons who were stockholders of the Bank at the time of the appointment of a Receiver filed their petition praying that they be made parties defendant in the said proceedings. The prayer of this petition was granted. On the same day these new parties defendant filed their petition praying that the said order of June 19, 1933, be rescinded and revoked. The allegations of this petition and the answer of the Bank Commissioner thereto, raises the question of the constitutionality of Sec. 72 of Art. II of the annotated Code, and if it be held constitutional, its proper construction and effect.

The more material facts appearing from the testimony and stipulation filed in the case are as follows:

The Bank was incorporated under the general provisions of the law on the 24th day of February, 1910. Many of the petitioners were creditors of the Bank at the time of the appointment of the Receiver, as well as stockholders. Thirteen of these stockholders were such prior to June 1, 1910, the effective date of the Act of Assembly now appearing in the Code as above stated.

The liability of a stockholder of a corporation to be called upon to pay the debts of the Corporation is a liability founded upon contract.

Norris Vs. Wrenschall 34 Md. 499
Brant Vs. Echlen, 59 Md. 351
Coulbourn Vs. Boulton, 100 Md. 351
Steel Co. Vs. Equitable Soc. 113, Md. 80
Colton Vs. Mayer, 90 Md. 711

Republic Iron & Steel Co. Vs. Carlton 189 Fed. 130

In Norris Vs. Wrenschall, supra, page 500, it is said in an opinion by Judge Miller, that the stockholder's liability "is not in the nature of a penalty, like that in other sections, imposed upon the trustees, managers, directors or other officers of the corporation, for doing that which the statute expressly or by implication forbids, or omission to do something which the law directs to be done § § it is § § virtually and in effect a liability upon a contract and the mutual agreement of the parties, not indeed in form an expressed personal contract, but an agreement of equally binding obligation consequent upon and resulting from, the acts and admissions or implied assent of the parties". Or, as said by Judge Rose in Republic Iron & Steel Co. Vs. Carlton, supra, "In Maryland the liability of a stockholder to a creditor of a corporation is one founded on contract § § it follows that the plaintiff has a right to insist that the obligation of that contract shall not be impaired by subsequent legislation, nor may the State so change the remedy as substantially to impair or lessen the value of the contract."

Since the right of a creditor and the liability of a stockholder is founded on contract, and the contract is a creature either of the Constitution of the State or the valid statutes passed by the Legislature in pursuance of and in accordance with the Legislature's constitutional powers, it is necessary to examine first, the constitutional provisions.

Sec. 39 of Art. 3 of the Constitution is as follows:

"The General Assembly shall grant no charter for Banking purposes, nor renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon, note, bill or otherwise; the books, papers and accounts of all Banks shall be open to inspection under such regulations as may be prescribed by law."

Since the adoption of the Constitution of 1867, there have been but two general statutes dealing with

the subject matter of Art. 3, Sec. 39. The first was Sec. 11 of Chapter 206 of the Acts of 1870, appearing in the Code of 1888 as Sec. 27 of Art. 11. The second was Sec. 68 of Chap. 219 of the Acts of 1910, appearing in the present Code as Sec. 72 of Art. 11.

The Act of 1870 Chap. 206, Sec. 11 is as follows:

"The continuance of the said several corporations shall be on the condition that the stockholders and directors of each of said corporations shall be liable to the amount of their respective share or shares of stock in such corporation, for all its debts and liabilities upon note, bill or otherwise; and upon this further condition, that this article and every part of it may be altered from time to time, or repealed, by the Legislature."

This Act is in the identical language of Sec. 39 of Art. 3, of the Constitution, except that it includes the directors as well as the stockholders.

Chapter 338 of the Acts of 1852 authorized the formation of corporations for manufacturing purposes. Sec. 9 of that Act provided, "That all stockholders of every company incorporated under this Act shall be severally and individually liable to the creditors of the Company in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by such company," **until** the whole amount of capital stock is paid in. In Matthews Vs. Albert, 24 Md. 527, the creditor of a manufacturing company sought to recover from a stockholder the double liability under the section quoted. It was held that the stockholder was liable for the debt of the corporation while he was a stockholder, but was not liable to a creditor who became such after his stock had been transferred. This case was decided in 1866.

In Norris Vs. Wrenschall, 34 Md. 492, a creditor of a manufacturing corporation sought to recover against a stockholder the double liability under Sec. 52 of Art. 26 of the Code of 1860, being the same statutory provision under consideration in the last mentioned case. The Court said: "We have also there (Norris Vs. Johnson, Ante page 485) determined that the extent of the liability of each stockholder is measured by the amount of stock held by him at the time the debt was contracted, continues at least until all the capital stock is paid in, and is in no wise affected by the amount thereof that may at any time remain unpaid. There is no provision in the Code by which this liability is made dependent

upon any other contingency than the contracting of the debts by the corporation, whilst the defendant was a stockholder, and before the capital stock is fully paid up. These two conditions make the liability determinate and irrevocable."

Hager Vs. Cleveland, 36 Md. 476, was the same character of case as the one last mentioned. The Court says: "This brings us to the second ground of defense; whether the transfer of stock by the appellant, exonerates him from personal liability for the debt contracted when he was a stockholder and before the whole capital stock was paid in."

"The language of Sec. 52, it must be admitted, is general in its terms, and does not in words declare whether the individual liability shall attach to such as are stockholders at the time the debt is contracted, or to those holding stock at the time the suit was brought. It is obvious, however, that the protection of the creditor was the paramount object the Legislature had in view, and the section in question, ought to receive such a construction as will best accomplish this object." The Court later quoting from Norris Vs. Wrenschall, supra says: "It is a debt under the statute due from the stockholder to the creditor, spring out of and co-existent with the contract between the corporation and the creditor," (Colton Vs. Mayer 90 Md. 717), and then says: "If so, it be a debt due from the stockholder to the creditor coexistent with the contract by the company, it is clear that no act by the stockholder without the consent of the creditor can exonerate him from the liability thus incurred. The relation of stockholder creates a perfect legal obligation to pay the debts contracted by the company, and it is upon the faith of this perfect legal obligation that parties deal with the company. The liability of the stockholder, being therefore, in the nature of a contract made between the company, the creditor and himself, we are of opinion that it continues and **is in no manner affected by the mere transfer of his stock.** (Bold face ours). This construction is fully warranted by the language of the statute and best accomplishes the purpose of the Legislature, namely, the protection and security of creditors".

In Weber Vs. Fickey, 47 Md. 196, the Court was construing the liability of a stockholder under Sec. 59 of Chap. 325 of the Acts of 1872, the statute being similar to the one in the aforegoing cases. In passing upon a demurrer to the declaration in a suit at law the Court

says: "Another defect in the declaration is the omission to allege that the defendant was a stockholder at the time the debt sued for was contracted. It is not sufficient that he should have become one afterwards or was so, at some time prior to the date of the credit given, he must have been a stockholder at the time, Hager Vs. Cleveland, 36 Md. 476, and this is as essential to the right of recovery against him as the fact that there is an amount of his subscription still unpaid. It is as necessary to aver the one as the other, and the omission of either averment from the declaration is a fatal defect."

In Hammond Vs. Straus, 53 Md. the Court had under consideration the liability of a stockholder of a banking corporation to a creditor of the bank. The provisions of the charter of the bank with respect to this liability are contained in Sec. 14 of Chap. 118, of the Acts of 1874, and are identical in language with the constitutional provisions heretofore referred to, with the addition of "directors" to "stockholders", and with the Act of 1870, Chap. 206, Sec. 11, heretofore referred to. The Court announced, "To entitle the plaintiff (creditor) to recover in this action it was essential that three things should be made to appear: 1. That a corporation, such as that alleged should have been created; 2. That the defendant was a stockholder therein; and 3. That the plaintiff was a creditor of the corporation and that he became such while the defendant was a stockholder", and Judge Boyd said in Murphy Vs. Wheatley, 102 Md. 501, 517,

> "If depositors and other creditors become such before stockholders occupying that relation to the company they cannot say that they relied on those persons for additional security, or had any right to look to them, for they were not then, and might never become stockholders. But under the rule adopted by this Court, they can if they choose, ascertain who the stockholders are when the debts are contracted."

In Colton Vs. Mayer, 90 Md. 711, the Court considered the rights of creditors and the liabilities of stockholders under the provisions contained in the Charter of the South Baltimore Bank. The suit was by receivers against a stockholder. The charter fixed the rights of the creditor and the obligations of the stockholder in the identical language of the Constitution, except that it added "directors," to the stockholders. The Court reaffirmed Hammond Vs. Straus, supra, and went on to

say: "In as much as this charter does not authorize the receivers to sue, the test of their right to do so is to ascertain whether it gave the corporation any property or estate in this liability of the stockholders, or in any manner made it an asset of the bank, for, unless it did, it is clear that they cannot maintain this suit against the defendant on the mere ground that he was a stockholder. Then the charter says, that the stockholders and directors of this corporation shall be liable to the amount of their respective shares of stock for all of its debts and liabilities", to whom were they to be so liable? Clearly not to the corporation for its own debts and liabilities, but manifestly they were to be liable to the creditors". And the Court further says: "There was no liability of any kind to the corporation, by reason of this provision in the charter, and at no time from its organization to its dissolution could it have demanded one penny from the appellee on account of it."

Murphy Vs. Wheatley, 102 Md. 501, was a suit to enforce the triple liability of stockholders in a trust company under Sec. 85 L of Art. 23 of the Code Act of 1892, Chap. 109, and it was there held that a stockholder was not liable to a creditor who became such before the ownership of the stock, a liability denied by the Circuit Court. In that case the opinion by Judge Boyd says: "We are aware that many courts—perhaps a majority of those in this Country—have held to the contrary, but the decisions of this Court unquestionably sustain that answer of the lower Court. It is to be regretted if this construction of the statute will cause such difficulties as are suggested by the appellants (of accounting, collection and apportionment), but even such results would be preferable to the risk of doing manifest injustice to those who became stockholders during the closing days of this company. And on page 518, it is said, "The liability, in this respect, is well settled in the State in the earlier cases. They held that the extent of the liability was measured by the amount of stock held by the stockholders **at the times the debts were contracted,** and stockholders were not liable for debts contracted **before** they became such". If this is not the law now, then the stockholders' liability is a penalty and is not contractual. To hold that this liability is a penalty for owning stock the day the bank closes would be not only to overrule the decisions, but to repudiate the interpretation given the constitutional provision (Art. 3 Sec. 39) by Judge Alvey in Hammond Vs. Straus 53 Md. 1, and by Judge Boyd in Colton Vs. Mayer 90 Md. 711.

The cases from which we have quoted, and to which we have referred, firmly establish the principle upon which stockholders are held liable to creditors in Maryland. Some of these cases have considered statutes wherein the language was similar to the language of the Constitution. Others have considered language identical with the language of the Constitution. One of them was decided before the adoption of the Constitution. None of these cases has ever been overruled, nor its authority questioned. From them we think it clearly decided that Sec. 39 of Art. 3 of the Constitution requires the Legislature to give to creditors of Banks, and to impose upon stockholders of banks the following rights and obligations respectively. First: To give to creditors and impose upon stockholders direct and immediate responsibility to be enforced between themselves. Second: To give the creditor the right to pursue a stockholder, and to place upon the stockholder a liability for the debts of the bank incurred while the stockholder was such. Third: The right of the creditor and the responsibility of the stockholder to continue, notwithstanding the stockholder transfers his stock. And fourth: The liability of the stockholder to be an asset of the creditor and not an asset of the corporation. It does not require the Legislature to impose liability on a stockholder for any debts except those attaching while the stockholder is such.

These rights of creditors against stockholders, which the Constitution requires the Legislature to give them, are property. If these rights are property it is not within the power of the Legislature to take them away. As stated in Mister Vs. Thomas, 122 Md. 445-457, "It is not, therefore, within the power of the Legislature to have exempted the stockholders of such a corporation from the obligations imposed by Sec. 39 of Art 3 of the Constitution." This liability in order to be unassailable, must be a property right, and if so available to creditors against stockholders who were such when the debt was created. If this is not true then the only alternative is to declare it to be a penalty. If a penalty the stockholder, if he sees a bank's failure ahead may rid himself of stock in any way he choses, no matter what his motive may be, and he can thus free himself of liability. If the transfer be in fraud of any one's right, it must be a property right. There can be no fraud in ridding oneself of a penalty.

It is in the light of these principles, and in that light

alone, that we are bound to approach the consideration of Sec. 72, of Art. 11 of the Code.

There is no prohibition in the Constitution against giving creditors of banks rights or imposing upon stockholders obligations greater than required by the Constitution. Murphy Vs. Wheatley, supra. But, when we come to consider the only other Act relating to the rights of creditors against stockholders of Banks, to wit, Sec. 72 of Art. 11 of the Code, we are bound to assume the Legislature intended to obey the Constitutional Mandate to it; for it would ill become the Court to charge a coordinate branch of the State Government with a wilful disobedience of the will of the people as expressed in the fundamental law. If, therefore, Sec. 72 of Art. 11 of the Code is found to give to creditors the rights, and to impose upon stockholders the liabilities required by the Constitution, it will be no objection to find that it gives greater rights to creditors and imposes greater liabilities upon stockholders. However, if the Section of the Code under consideration is found to give only one right to creditors and impose one liability upon stockholders, then, if by any reasonably possible construction the Act can be held to comply with the Constitutional Mandate, it must be so held. And if the Section in question is found to undertake to deny creditors the rights guaranteed to them by the Constitution, it must be held to contravene Sec. 10 of Art. 1 of the Federal Constitution, as well as the Fourteenth Amendment thereto, and in addition thereto the 23rd Article of our own Bill of Rights. Md. Jockey Club Vs. State 106 Md. 413-Hawthorne Vs. Calef 2 Wall 10-21.

Sec. 72 of Art. 11 of the Code purports to provide but one fund for the benefit of creditors of banks. It purports to impose but one obligation upon stockholders. We think its provisions can reasonably be construed as complying with the provisions of the Constitution. Any other construction would mean that every State bank organized under the general law would be unlawfully operating because of the absence of the requirement of Art. 3 Sec. 39 of the Constitution. That provision must be fastened on every bank chartered by this state.

The Constitution provides that stockholders shall be liable for "all debts etc." The Act of 1870 used the same language. The charter in Hammond Vs. Straus, supra, repeated it. The statute in Murphy Vs. Wheatley, supra, also repeated it. The Charter in Colton Vs. Mayer supra, did likewise. These cases determined that the

liability for "all debts etc." meant debts attaching at the time the stockholders were such irrespective of any subsequent transfer of the stock. When, therefore, the Legislature in 1910 in the section under consideration again repeated the identical language "all debts etc." which had been given a very definite meaning by the cases referred to, it must be held to have intended the meaning already given it, unless a different meaning is forced by a different context. There is nothing in the Section of the Code under consideration that compels a different interpretation of the language. The "debts" to be benefited by the liability imposed under all the cases were not the debts which might be owing upon the insolvency of the bank. As to each stockholder they were the "debts" attaching during the time he was such.

The "stockholders" to be liable were designated in the charters in the cases cited, as well as in the constitutional provision, by the same language as they are designated in Sec. 72 of Art. 11. The Legislature therefore must have meant the same class of individuals as was determined to be included within that description in the language used in the cases. And "stockholders" as defined in the section must therefore be held to be the stockholders at the time of the creation of the debt for which the liability is sought to be enforced, irrespective of the transfer of their stock.

Not only is there no indication in this section that it was intended to make liable only stockholders of record at any time of the insolvency of the bank, but it affirmatively appears by the repetition of the language already interpreted as intended not to do so.

Beginning with the Act of 1892, Chap. 109, there are many statutes fixing the liabilities of stockholders of trust, guaranty and other corporations, as to which the Constitution contains no provision. In every one of those Acts the rights of pre-existing creditors are reserved. Likewise in Sec. 72 of Art. 11, the pre-existing rights of creditors of trust companies are reserved. As to creditors of banks there is no such reservation. As to banks the only previous statute was the Act of 1870, which, as has been said, was in the language of the Constitution. From this failure, in the Act of 1910, to reserve the pre-existing rights of Creditors of banks, the only logical conclusion is that the Legislature did not, by that statute, intend to make any change in those rights; but intended only to provide a different procedure for their enforcement.

This view further confirms us in our conclusion that the rights of creditors of banks under the Act of 1910 are identical with those rights under the Act of 1870, and that the Act of 1910 was intended by the Legislature to be construed exactly as was the Act of 1870, except so far as the Act of 1910 provides a different method of procedure.

Section 72 of Art. 11 of the Code provides that the liability of stockholders shall be an "asset of the corporation". If by that language it is meant that this liability is for the benefit of all the creditors of the Corporation, irrespective of the views we have heretofore expressed, then, in our view, it would be in violation of the Constitutional rights of creditors of the bank. If, on the other hand, it is held to mean that the liability of the stockholder is an asset of the corporation to be distributed by it or its receiver to the creditors according to their rights as heretofore defined, and we so construe it, then it merely provides for a more equitable distribution of the liability imposed for the benefit of creditors, and prevents multiplicity of suits among stockholders for contribution. This construction does no violence to the rights of creditors and the statute thus construed is not rendered inconsistent with our State or Federal Constitutions.

Miners & Merchants Bank Vs. Snyder 100 Md. 57.

Mister Vs. Thomas, 122 Md. was decided after the Act of 1910, but the receivers who brought the suit were appointed in 1907. The Farmers Trust, Banking and Deposit Co. for whom the receivers were appointed, were subject to the provisions of the Act of 1904, which was an amendment to Chaps. 192 and 279 of Act of 1892, by which the stockholders were bound by Sec. 11 of the Charter. The order of the lower Court directed the receivers to bring suit against stockholders "who would in any way be liable for the debt of the said Company." There was nothing in this order limiting the liability to stockholders of record of the day of the receivership, from which it might be inferred that the Chancellor contemplated the possible liability of former stockholders. Nor did the Court of Appeals in the opinion by Judge Burke in terms say it was an asset of the corporation. What he did say (p 458) was, that it was "to be treated as an asset of the corporation and enforced by the receivers under the order of that Court." The views we have hereinbefore stated are therefore in no way inconsistent with this case.

We have hereinbefore stated that the liability of a stockholder of a bank is an "asset of the corporation" only in the sense that it may be collected by the receiver for the benefit of those creditors who became such while the stockholders against whom the liability is enforced, were such. In so determining we found that Sec. 72 of Art. 11 of the Code was intended to be a performance by the Legislature of the Constitutional Mandate and no more. It follows as a necessary result that stockholders who are also creditors are equitably entitled to set-off the debt of the bank to them against the stockholders' liability. Such a ruling is necessary to sustain the constitutionality of the statute, and is a reasonable construction of it.

In Cahill Vs. Original Big Gun Asso. 94 Md. 353, the Court allowed the set-off because the charter considered that case required it. The pertinent provisions of the charter are in the identical language of the Constitution except that "directors" is added to stockholders against which liability is imposed. The Charter considered is the one, the effect of which was construed in Colton Vs. Mayer, supra. Strauss Vs. Denny, 95 Md. 690 reaffirmed this decision.

In the discussion of this case we are not unmindful of two recent cases in the Court of Appeals holding stockholders liable to assessment, but neither of them says what stockholders are liable, nor for the benefit of what creditors was there such liability. Those cases were heard and decided on the theory of liability, and the constitutional provision was not under attack.

In the case of Lange Vs. Ghingher, 168 Md.—178A 116, the question presented and decided was whether the stockholders of the American Trust Company were relieved of their statutory liability because of an agreement whereby management of the bank had been taken over by another bank, with other banks agreeing to share in any shortage in the liquidation of the insolvent bank.

In the case of Robinson Vs. Hospelhorn, 168 Md.—, Daily Record June 27, 1935, the decision was that the stockholders' liability was primary, and that the assessment of the stockholders' liability did not need to await the liquidation of the bank's assets and that the assessment was not required to be delayed until the liquidation of the bank's assets by a liquidating corporation to which the assets of the bank had been transferred under an assignment by which it had until July 1, 1938 to con-

vert such assets. These were the only questions submitted, argued and decided in that case. The questions submitted were so limited by the following stipulation in the record of that case;

> "It is intended that all other questions, including the questions of insolvency, vel non, and the extent thereof, the status of subscribers to the guaranty fund, and the question as to the liability of particular stockholders for debts created before they became such, or after the bank passed into the control of the Bank Commissioner, and all other relevant questions are reserved for the future determination of the Court, as being unnecessary for present decision."

The fact that it has been the practice under the National Banking Act (U. S. Rev. St. Sec. 5151) to impose this liability upon all stockholders of record of the date of the receivership is neither precedent nor authority in this State. The Constitution of the United States is silent on the subject, and the statute is merely a banking regulation. In 7 C. J. 769 Sec. 606, it is said: This liability is created for the sole benefit of creditors, and is held to arise purely by force of statute and not to be contractual in its nature". In this State the very existence of a bank is contingent upon its being subject to a stockholder's liability in addition to the payment for the stock, and this liability has been declared in all of the cases cited to be contractual in its nature and enforceable in the manner provided. It is not an arbitrary exercise of power by the Legislature, but a contractual obligation, which is a condition precedent to the conduct of a banking business by a corporation. Plaintiff's counsel have cited numerous cases to the effect that this is an arbitrary power in the Legislature, and that the liability is in the nature of a special or trust fund for the security of creditors generally. Our decisions are upon the theory, and they have so construed the language of our Constitution, (Hammond Vs. Straus, supra and Colton Vs. Mayer, supra), and there is individually responsibility of the stockholder to the creditor who became such during such individual stockholding, and that this liability is not ended by the transfer of his stock, and this is in line with the last clause of the constitutional provision which reads, "The books, papers and accounts of all banks shall be open to inspection, under such regulations as may be prescribed by law", and with what was said by Judge Boyd, already quoted, from Murphy Vs. Wheatley, supra.

All irregularities, if any, as to the time and method of presenting to the Court the matters herein considered were waived by the solicitors for the respective parties, and the questions submitted on their merits.

The order and decree of June 19, 1933, will be rescinded and revoked.

D. LINDLEY SLOAN,
FRANK G. WAGAMAN.

Filed July 27, 1935.

DECREE

STATE OF MARYLAND Vs. THE HAGERSTOWN BANK AND TRUST COMPANY	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

Decree

The matter of the petition of John J. Ghingher, Bank Commissioner, Receiver of The Hagerstown Bank and Trust Company, heretofore filed in this cause on the 16th day of January, A. D., 1935, seeking an assessment against the stockholders of said Bank, the answers of various stockholders thereto, the evidence, stipulations and all other matters for the debts thereof having been read and considered, and counsel for the respective parties having been heard, it is thereupon this 31st day of July, A. D., 1935, by the Circuit Court for Washington County, pursuant to and in conformity with the opinion heretofore filed in this cause on the 27th day of July, A. D., 1935, adjudged, ordered and decreed that the aforesaid petition be and the same is hereby dismissed, without prejudice to such further proceedings as the receiver may be advised are proper and in accordance with the opinion heretofore filed.

D. Lindley Sloan.

Filed July 31, 1935.

PETITION FOR AUTHORITY TO TAKE APPEAL AND ORDER OF COURT THEREON.

STATE OF MARYLAND Vs. HAGERSTOWN BANK & TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

To the Honorable, the Judges of said Court:

The petition of John J. Ghingher, Bank Commissioner, Receiver for the Hagerstown Bank and Trust Company, Respectfully represents:

1.—That heretofore on the 16th day of January, A. D., 1935, your petitioner filed in this cause a petition seeking an assessment against the stockholders of The Hagerstown Bank and Trust Company of an amount equal to the par value of the shares of stock held by such stockholders for the benefit of the creditors of said Hagerstown Bank and Trust Company.

2.—That pursuant to an opinion filed in this cause by your Honorable Court on July 27, 1935, a decree was passed by your Honorable Court on the 31st day of July, 1935, dismissing the said petition.

3.—That your petitioner feels aggrieved by said decree of your honorable Court and in view of the large number of persons whose rights are affected by the said determination of your Honorable Court desires to take an appeal from said decree to the Court of Appeals of Maryland.

4.—That by order heretofore passed by your Honorable Court Messrs. J. Lloyd Harshman and Robert H. McCauley were appointed special counsel for your petitioner in all matters affecting or growing out of the question of stockholders' liability, and that said attorneys have recommended that an appeal be taken as hereinabove set forth.

Your petitioner therefore prays your Honorable Court to pass an order authorizing and empowering him to take an appeal from the decree hereinabove mentioned.

Respectfully submitted,
ROBT. H. McCAULEY,
J. LLOYD HARSHMAN,
Special Counsel for Receiver.

Upon the aforegoing petition it is this 3rd day of August, A. D. 1935, by the Circuit Court for Washington County, sitting in Equity Ordered and Decreed, That John J. Ghingher, Bank Commissioner of the State of Maryland, Receiver for The Hagerstown Bank and Trust Company, be and he is hereby authorized and empowered to take an appeal to the Court of Appeals of Maryland from the decree filed in this cause on July 31, 1935, as mentioned in the aforegoing petition.

FRANK G. WAGAMAN.

Filed August 3rd, 1935.

ORDER FOR APPEAL

STATE OF MARYLAND Vs. HAGERSTOWN BANK & TRUST COMPANY, A Body Corporate	NO. 12,777 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

Mr. Edward Oswald, Clerk:

Please enter an appeal to the Court of Appeals of Maryland from the final decree in this cause dated the 31st day of July, A. D. 1935, dismissing the petition of John J. Ghingher, Bank Commissioner, Receiver for The Hagerstown Bank & Trust Company, filed on the 16th day of January, A. D. 1935, for the purpose of determining and enforcing the liability of stockholders for the benefit of creditors.

ROBT. H. McCAULEY,
J. LLOYD HARSHMAN,
Special Counsel for Receiver.

Filed Aug. 5th, 1935.

DOCKET ENTRIES

Bill in Equity for a Receiver filed Dec. 3rd, 1934;

Complaintant's Exhibit No. 1, filed Dec. 3rd, 1934;

Answer of Hagerstown Bank & Trust Company, a Body Corporate filed Dec. 3rd, 1934;

Decree passed and filed Dec. 3rd, 1934, appointing John J. Ghingher, Bank Commissioner of the State of Maryland, Receiver;

Bond filed and approved Dec. 3rd, 1934;

Petition of Receiver for Determination of Liability of Stockholders and Order of Court thereon filed Jany. 16th, 1935;

Petition & Order of Court thereon authorizing Receiver to employ Special Counsel in the matter of Stockholders' liability filed Feby. 25th, 1935;

Answer of W. P. Wachter filed March 28th, 1935.

Answer of Evelyn M. Wachter filed March 28th, 1935.

Answer of Ella B. Young filed March 28, 1935;

Answer of Mildred L. (Wachter) Fiery filed March 28, 1935;

Answer of F. Sydney Cushwa to Petition of John J.

Ghingher, Receiver & Order of Court thereon filed Mar. 28th, 1935;

Answer of Susan F. Cushwa to Petition of John J. Ghingher, Receiver & Order of Court thereon filed Mar. 28th, 1935;

Answer of Sarah R. Hoffman, Executrix, to Petition of John J. Ghingher, Receiver and Order of Court thereon filed Mar. 28th, 1935;

Answer of Anna Elizabeth Miller to Petition of John J. Ghingher, Receiver & Order of Court thereon filed Mar. 28th, 1935;

Answer of Ida M. Newcomer to Petition of John J. Ghingher, Receiver & Order of Court thereon filed Mar. 28, 1935;

Answer of Ida M. Newcomer & Joseph W. Howe, Executrix and Executor, to Petition of John J. Ghingher, Receiver and Order of Court thereon filed Mar. 28th, 1935;

Answer of John E. Stonebraker, Admr. d. b. n. to Petition of John J. Ghingher, Receiver & Order of Court thereon filed Mar. 28th, 1935;

Answer of Julia Hamilton Briscoe, Trustee in Equity Cause No. 8761 filed Mar. 28th, 1935;

Answer of Julia Hamilton Briscoe filed Mar. 28, 1935;

Answer of Wm. H. Miller filed Mar. 28th, 1935;

Answer of Nora Miller Baker filed Mar. 28, 1935;

Answer of C. Walter Baker filed Mar. 28th, 1935;

Answer of Gladys K. Bostetter to the Petition of John J. Ghingher, Bank Commissioner and to the order of Court to show cause why the stockholders' assessments should not be made final filed Mar. 28th, 1935;

Answer of Crystal Bostetter Hershey to the Petition of John J. Ghingher, Bank Commissioner and to the Order of Court to show cause why the stockholders' assessments should not be made final filed Mar. 28th, 1935;

Answer of Martin V. B. Bostetter to the Petition of John J. Ghingher, Bank Commissioner and to the Order of Court to show cause why the stockholders' assessment should not be made final filed Mar. 28, 1935;

Answer of John S. Kausler showing cause against imposition of double stock liability and Affdt. thereto filed Mar. 28, 1935;

Answer of Ardella M. Newcomer filed Mar. 28, 1935;

Receiver's Report and Statement of Assets and Liabilities in connection with the assessment of stockholders filed June 21st, 1935;

Opinion of Court filed July 27, 1935;

Decree passed and filed July 31, 1935;

Petition for Authority to take Appeal & Order of Court thereon filed August 3, 1935;

Order for Appeal filed Aug. 5th, 1935.

STATE OF MARYLAND,
WASHINGTON COUNTY, to wit:

I, Edward Oswald, Clerk of the Circuit Court for Washington County, do hereby certify that the aforegoing is truly taken from the Record of Proceedings in the above entitled cause.

IN TESTIMONY WHEREOF I hereunto set my hand and affix the seal of the Circuit Court for Washington County at Hagerstown, this 16th day of August, A. D. 1935.

EDWARD OSWALD, Clerk.

Approved as the record in the appeal of the above entitled case to the Court of Appeals of Maryland.

ROBT. H. McCAULEY,
J. LLOYD HARSHMAN,
Special counsel for Receiver,
Appellant.

JOHN WAGAMAN,
CHARLES F. WAGAMAN,
MARTIN V. B. BOSTETTER,
W. P. WACHTER,
C. WALTER BAKER,
LEVIN STONEBRAKER,
Attorneys for Appellees.

[fol. 50] IN COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1935

No. 62

JOHN J. GHINGHER, Bank Commissioner, Receiver for The Hagerstown Bank and Trust Company,

vs.

THE STOCKHOLDERS OF THE HAGERSTOWN BANK AND TRUST COMPANY, a Body Corporate

DOCKET ENTRIES

Appeal from the Circuit Court for Washington County. Filed August 29, 1935.

January 22, 1936. Decree reversed, and cause remanded, with costs to the appellant.

Opinion filed. Per Curiam.

February 20, 1936. Decree filed.

February 20, 1936. Motion for reargument filed.

April 15, 1936. Motion for reargument overruled.

Bill of costs omitted in printing.

[fol. 51] IN COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1935

No. 62

JOHN J. GHINGHER, BANK COMMISSIONER, ETC.

vs.

THE STOCKHOLDERS OF THE HAGERSTOWN BANK AND TRUST COMPANY

OPINION—Filed January 22, 1936

Per CURIAM:

In this case, on facts similar to those stated in the opinion filed in the case of Ghingher, Receiver, v. Stockholders of the People's Banking Company of Smithsburg, (No. 61,

October Term, 1935), the same question of law have been presented, and the conclusions are necessarily the same.

For the reasons stated in that opinion, therefore, the decree below will be reversed, and the cause remanded for further proceedings in accordance with that opinion.

Decree reversed, and cause remanded, with costs to the appellant.

[fols. 52 & 53] IN COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1935

No. 62

JOHN J. GHINGHER, BANK COMMISSIONER, ETC.

vs.

THE STOCKHOLDERS OF THE HAGERSTOWN BANK AND TRUST COMPANY

DECREE—Filed February 20, 1936

The Appeal in the above entitled case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon on this 19th day of February, 1936, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated July 31st, 1935, of the Circuit Court of Washington County be and the same is hereby reversed, and cause remanded, with costs to the appellant.

Carroll T. Bond, Chief Judge for the Court.

[fol. 54] IN COURT OF APPEALS OF MARYLAND

ORDER ALLOWING APPEAL—Filed July 13, 1936

And now, to wit, on July 13th, 1936, it is Ordered, That an appeal from the Court of Appeals of the State of Maryland to the Supreme Court of the United States be allowed as prayed upon the filing of a bond for costs in the sum of Five Hundred ($500.00) Dollars with good and sufficient

security, and the United States Fidelity and Guaranty Company is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland.

[fols. 54½-56] [File endorsement omitted.]

[fol. 57] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 16, 1936

Now come Julia Hamilton Briscoe, et al., appellees in the Court of Appeals of Maryland, petitioners in the Circuit Court for Washington County, Maryland, and hereinafter called "appellants" and for their assignment of errors show:

1. That the Court of Appeals of Maryland erred in holding valid and constitutional said section 72 and in holding that said Statute imposed upon the appellants a liability as holders of bank stock different from the contractual liability assumed by said appellants under the long established and well settled law of Maryland at the time of their respective purchases of shares of stock and thereby impaired the obligation of the contract entered into by said appellants contrary to Section 10 of Article 1 of the Constitution of the United States, and deprived them of property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States in the following respects:

A. By rendering them liable as stockholders of record for all the debts of the bank irrespective of the times when stock was purchased and the times the bank's debts were incurred, contrary to the long established and well settled law of Maryland, prior to the instant case, that stockholders of banks are liable under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes only for debts incurred by the bank while they [fol. 58] were stockholders.

B. By rendering them liable to the Receiver of the particular bank, contrary to the long established and well settled law of Maryland prior to the instant case, that stockholders of banks are liable under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes, only to the creditors thereof, and thereby deprived them of the right to set off against their respective liability what, if any, debt was due them from the bank as was by said long established and well settled law of Maryland prior to the instant case, permitted in suits against them by individual creditors.

2. That the Court of Appeals of Maryland erred in holding valid and Constitutional said Section 72 and in holding that said statute imposed liability only upon stockholders of record contrary to the long established and well settled law of Maryland at the time of the making of deposits in said bank by the appellant depositors and creditors of said bank, and thereby deprived them of property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States and impaired the obligation of their contract with the stockholders contrary to Section 10 of Article 1 of the Constitution of the United States.

A. By depriving the appellant depositors and creditors of said bank of their contractual right and all remedy to recover against stockholders who were such at the time their respective deposits were made or the bank became otherwise indebted to them, but who are no longer stockholders thereof, contrary to the long established and well settled law of Maryland prior to the instant case, that the liability of the stockholders under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes for any debt of the bank incurred while they were stockholders was in no manner affected by the mere trans- [fol. 59] fer of their stock.

3. That the Court of Appeals of Maryland erred in limiting liability to stockholders of record, contrary to the long established and well settled law of Maryland prior to the instant case that the language of the aforesaid Section 39 of Article 3 of the Constitution of Maryland and previous statutes imposed upon stockholders of banks a con-

tractual liability for only such debts of the bank as were incurred while they were stockholders from which liability they were not discharged by the mere transfer of their stock, and thus only by a misconstruction of said Section 72 does the same impair the obligation of contracts of these appellants and deprive them of property without due process of law.

Wherefore, the appellants pray that the said decree of the Court of Appeals of Maryland made and entered on February 20, 1936, be reversed and that said Court may be directed to enter a decree in favor of the appellants.

Respectfully submitted, Levin Stonebraker. John Wagaman. Charles F. Wagaman. Martin V. B. Bostetter. E. Walter Baker. David W. Doub.

[fol. 59½] [File endorsement omitted.]

[fols. 60 & 61] Bond on Appeal for $500.00, approved and filed July 13, 1936; omitted in printing.

[fol. 62] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

STIPULATION FOR RECORD TO SUPREME COURT OF THE UNITED STATES—Filed August 12, 1936

It is hereby stipulated and agreed that the record on appeal to the Supreme Court of the United States from the Court of Appeals of Maryland shall consist of the follow-
[fol. 63] ing:

12. That there shall also be included in the record to be transmitted to the Clerk of the Supreme Court of the United States the attached stipulation marked "Additional Stipulation".

Additional Stipulation

It is hereby stipulated and agreed by and between the respective parties to this appeal that:

1. That the parties appealing from the Court of Appeals of Maryland to the Supreme Court of the United States had on the date of the closing of the Hagerstown Bank and Trust Company and continuously to the present time deposits in said Bank and that said appellants were and still are creditors of said Bank in the following amounts:

F. Sydney Cushwa	$ 83.83
Susan F. Cushwa	No balance
Nora Miller Baker	No balance
C. Walter Baker	No balance
Gladys K. Bostetter	243.76
Crystal Bostetter Hershey	1.48
Ardella M. Newcomer	122.42
Julia Hamilton Briscoe	1,914.73
Julia Hamilton Briscoe, Trustee	4,965.52

2. That some of the shares of stock outstanding at the time of the closing of the Hagerstown Bank and Trust Company were transferred to the record stockholders thereof who are parties appellant herein at a time after [fol. 64] some of the deposits were made and some of the liabilities incurred which were at the time of its closing and now are part of the obligations of said Bank.

3. That the parties appellant in this cause on the respective dates shown by the docket entries, filed answers in the Circuit Court for Washington County, substantially identical to the answer of John S. Kausler set forth at length in the record and that the Supreme Court of the United States shall take and consider the said Answer of John S. Kausler as the Answer of the respective parties appellant herein.

C. Walter Baker, Charles F. Wagaman, John Wagaman, Martin V. B. Bostetter, David W. Doub, Levin Stonebraker, Attorneys for Appellants.
J. Lloyd Harshman, H. McCauley, Attorneys for Appellee.

[fol. 65] Clerk's certificate to foregoing transcript omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

[fol. 66] STATEMENT OF APPELLANTS OF THE POINTS OF LAW WHICH THEY INTEND TO RELY AND THE PARTS OF THE RECORD NECESSARY FOR CONSIDERATION OF THE SAME—Filed August 20, 1936

A. Points of Law

1. That section 72 of Article 11 of the Annotated Code of Public General Laws of Maryland is invalid and unconstitutional, because it imposes upon the appellants as holders of stock in the above mentioned bank, a liability different from the contractual liability assumed by said appellants and imposed upon them under the Constitution of Maryland and under the long established and well-settled law of said State at the time of their respective purchases of shares of stock of said bank and thereby impairs the obligation of the contracts entered into by said appellants contrary to section 10 of Article 1 of the Constitution of the United States and thereby deprives them of property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States:

(a) In that said section 72 renders the appellants liable for all debts of the bank irrespective of the times when their said stock was acquired and the times the bank's debts were incurred, contrary to their said contract and the long established and well-settled law of Maryland that stockholders in banks are liable under section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith only for debts incurred by the bank while they were stockholders;

[fol. 67] (b) And in that said section renders the appellants liable to the Receiver contrary to the long established and well settled law of Maryland that stockholders of banks are liable under their said contracts and under

the aforesaid section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith only to the creditors of said Bank and thereby deprives the appellants of the right to set off against their respective liability what, if any, debt was due them from the Bank, to which set off they were entitled by said contract under the long established and well-settled law of Maryland.

2. That said section 72 of Article 11 of the Annotated Code of Public General Laws of Maryland is invalid and unconstitutional because it deprives the appellants of property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States and because it impairs the obligation of their contracts made between stockholders and creditors of the above named Bank contrary to section 10 of Article 1 of the Constitution of the United States, by limiting liability to stockholders of record and depriving the appellant depositors and creditors of said Bank of their contractual right and all remedy to recover against stockholders who were such at the time their respective deposits were made, or the Bank became otherwise indebted to them, but who are no longer stockholders thereof, and depriving the appellant stockholders of the right to contribution from former stockholders to which said rights and remedies they were entitled under said section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith and under the long established and well-settled law of Maryland that stockholders were not discharged from liability by the mere transfer of their stock.

3. That the invalidity and unconstitutionality of said section 72 result, from the reasons aforesaid, only because [fol. 68] of the misconstruction placed upon the same by the Court of Appeals of Maryland in limiting the liability purporting to be imposed by said section 72 to stockholders of record only; whereas, the proper construction of said section (in accordance with the long established and well-settled law of Maryland under said section 39 of Article 3 of the Constitution of Maryland that stockholders of banks are contractually liable only for such debts of

the bank as were incurred while they were stockholders) will preserve the validity of said section and the constitutional rights of the appellants.

B. Portions of Record Necessary to Consideration of the Above Points of Law

The appellants designate as the portions of the record necessary for the consideration of the points relied upon by them, to be the entire transcript of the record transmitted to the Supreme Court of the United States by the Court of Appeals of Maryland, except, as follows:

The Clerk of the Supreme Court of the United States shall omit from the printed record (unless required by the rules of said Court to be included therein) the following portions of the transcript:

1. Petition for appeal from the Court of Appeals of Maryland to the Supreme Court of the United States and Order of Court thereon.

2. Citation to appellee and proof of service thereof.

3. Statement of appellants as to jurisdiction of Supreme Court of the United States.

4. Appellants' assignment of errors.

5. Statement served upon the attorneys for the appellee setting forth, and directing their attention to, the provi- [fol. 69] sions of paragraph 3 of rule 12 of the Revised Rules of the Supreme Court of the United States, and acknowledging service upon them of petition for and Order of Court allowing appeal, appellants' assignment of errors and appellants' statement as to jurisdiction.

6. Statement of appellee making against the jurisdiction of the Supreme Court of the United States and moving to dismiss or affirm.

7. Stipulation for transcript of record from Court of Appeals of Maryland to Supreme Court of the United States, except that there is to be included in the printed

record the portion of said stipulation entitled "Additional Stipulation" and being item No. 12 of said Stipulation.

Levin Stonebraker, C. Walter Baker, Daniel W. Doub, Martin V. B. Bostetter, Charles F. Wagaman, John Wagaman, Attorneys for Appellants.

Service acknowledged this 10th day of August, 1936.

Robt. H. McCauley, J. Lloyd Harshman, Attorneys for Appellee.

[fol. 70] [File endorsement omitted.]

Endorsed on cover: File No. 40,839. Maryland Court of Appeals. Term No. 299. Stockholders of Hagerstown Bank and Trust Company, appellants, vs. Warren F. Sterling, Receiver for Hagerstown Bank and Trust Company, etc. Filed August 20, 1936. Term No. 299, O. T., 1936.